

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

November 12, 2003

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Lalwani and Sandhu
Absent: None
Staff: Heyden, Lindsay and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Rob Means, 1421 Yellowstone, representing the Sunnyhills Neighborhood Association, noted that the Association reviewed the plans for BART, but was concerned that the nearest station is 3 ½ miles away and that citizens would have to drive to the Great Mall station. Mr. Means suggested that people could be transported using the Personal Rapid Transit (PRT) System and suggested presenting the information on the system at another Planning Commission meeting. The Commission agreed to agendize the PRT system at the next meeting.

**IV.
APPROVAL OF MINUTES
October 22, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of October 22, 2003.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Williams

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, announced that there will be only one meeting in November and that the 2nd meeting is canceled due to the Thanksgiving holiday. Mr. Lindsay also noted that the December 10th Subcommittee meeting will be very heavy as a result of the Parc North project coming back for design review, and that the meeting will start at 5:30 p.m. instead of 6:30 p.m.

Commissioner Giordano recalled that at the last meeting, Council adopted the variance of impervious surface coverage at 510 Vista Spring Court. She noted that when the project came forward to the Planning Commission, she asked staff if they could discuss whether decking would be considered part of the impervious surface calculations. Commissioner Giordano also noted that the Council approved a contract by Sentinel to look at the City's fair housing and would like the Commission to be copied on the report.

Mr. Lindsay agreed that staff would bring back the discussion of wood decking and also that the Commission would be copied on the report.

Chair Nitafan announced that the Knights of Columbus is hosting the annual Thanksgiving dinner for the poor and the needy on November 27th at St John's Pavalkis Hall from 11 a.m. till 3 p.m. He also noted that this is the 25th annual dinner and is well attended every year and that donations are appreciated and wished everyone a Happy Thanksgiving.

Commissioner Galang asked what type of dinner will take place and Chair Nitafan replied that it is a free dinner for the poor, needy and lonely and anyone can attend.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

VII. CONSENT CALENDAR Item Nos. 3, 4, 5, 6 and 7

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Don Peoples, Owner at 529 South Main Street, requested that Item No. 5 be taken off of the consent calendar and the Commission agreed.

Chair Nitafan opened the public hearing on Consent Item Nos. 3, 4 and 6.

There were no speakers from the audience.

Close Public Hearing on Item Nos. 3, 4 and 6

Motion to close the public hearing on Item Nos. 3, 4 and 6.

M/S: Williams/Giordano

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 3, 4, 6 and 7.

***3 USE PERMIT NO. P-UP2003-38 and 'S' ZONE APPROVAL AMENDMENT NO. P-SA2003-120:** A request to install three (3) telecommunication antennas and associated equipment cabinets on the Embassy Suites Hotel rooftop located at 901 E. Calaveras Boulevard (APN: 028-26-001). Applicant: MetroPCS. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2350) (*Recommendation: Approval with conditions*)

***4 SIX-MONTH REVIEW (P-PR2003-3) OF "S" ZONE APPROVAL AMENDMENT (P-SA2001-84):** A six month review for the Pro Home Depot store to review compliance with all previously approved conditions of approval at 1535 Landess Avenue (APN: 088-35-017). Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2278) (*Recommendation: Note receipt and file*)

***6 USE PERMIT NO. P-UP2003-35:** Request to operate a video store located at 769 East Capitol Avenue (APN: 092-06-033). Applicant: Cindy Hong. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2348) *(Recommendation: Approval with conditions)*

***7 ADMINISTRATIVE ITEM NO. P-AD2003-17:** Approve 2004 Planning Commission meeting schedule provided in the agenda packet. Acting Planning Manager: James Lindsay, (408) 586-3274. *(Recommendation: Approval)*

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

VIII. PUBLIC HEARINGS

Chair Nitafan opened the public hearing on Agenda Item No. 1

1. SIX-MONTH REVIEW OF USE PERMIT NO. 1488 AND USE PERMIT AMENDMENT NO. P-UA2003-21: *Verification of compliance with conditions and request for modification of conditions that pertain to live entertainment, number of bar stools and percentage of liquor sales for Ola's Corner Restaurant at 167 S. Main Street. Applicant: Ola Hassan. Project*

James Lindsay, Acting Planning Manager, presented a six-month review of Use Permit No. 1488 and Use Permit Amendment No. P-UA2003-21, verification of compliance with conditions and request for modification of conditions that pertain to live entertainment, number of bar stools and percentage of liquor sales for Ola's Corner Restaurant at 167 S. Main Street. Mr. Lindsay recommended approval of modified conditions of approval.

Commissioner Giordano recalled that Ola's Corner was previously called Campbell's Corner bar and asked staff what is the concern. Mr. Lindsay replied that the original concern was that Campbell's Corner was a bar and did not have a Use Permit and the facility predated the zoning regulations that were in place, so that when Ola Hassan took over, they had nothing to go with so the applicant had to apply for new permits. Staff was concerned about impacts to Main Street, prior to the idea of a mixed-use district with entertainment envisioned in the Midtown Plan, in addition to the number the parcel did not have enough parking spaces for a bar. Mr. Lindsay explained that the applicant came in with a restaurant use and the bar was ancillary to the restaurant at the time and live entertainment was not allowed. Staff felt that live entertainment will be an asset to the business and also added that the applicant is in full agreement with the conditions.

Chair Nitafan introduced the applicant Ola Hassan.

Ola Hassan, Owner at 167 S. Main Street, thanked staff and the Commission for supporting the project.

Reverend Dan Mills, pastor of Spring Valley Bible Church, Main Street, noted that he is against alcohol and bars in the community and would not support the project. He felt that the morale of society is for good things and doesn't see how a bar reflects this on the Main Street plan and that this type of use is not an asset to the community.

Close Public Hearing

Motion to close the public hearing.

M/S: Sandhu/Williams

AYES: 6

NOES: 0

Commissioner Galang asked staff to clarify special condition no. 5 which reads the following:

5. *Alcohol sales shall be secondary to food sales in gross revenue to ensure conversion of nightclub does not occur. (Police, P, modified on 11/12/03)*

Mr. Lindsay explained that the intent of the condition was to ensure that the facility would not turn into a bar, and that the use would predominantly be a restaurant, and that the alcohol sales were there as a secondary use to the restaurant. He explained that as long as food sales exceed the alcohol sales, then you have a restaurant with a bar, and not a bar with a restaurant.

Commissioner Galang asked if the Alcoholic Beverage Control (ABC) imposed any restrictions to Ola's Corner. Mr. Lindsay explained that Ola's Corner has a type 47 ABC license that means he can serve all types of alcohol as long as he is serving food until 2 a.m. He also added that if at anytime that Ola's alcohol sales exceed his food sales, then he will be in violation of condition no. 5.

Commissioner Lalwani empathized with Reverend Dan Mills and explained that she does not drink alcohol, nor does she encourage drinking, but felt that those who drink will find a place, so why not have an establishment that is properly established and let the people go there and drink.

Regarding special condition no.13 which reads the following: *The business shall stop service of alcohol at 1:30 AM*, Commissioner Galang asked if patrons could stay at the restaurant after 2 a.m. Mr. Lindsay replied that there is not a restriction of hours of food sales, and the applicant can serve food throughout the night, but the alcohol service needs to cease at 1:30 p.m. to be consistent with the condition.

Motion to approve the six-month review of Use Permit No. 1488 and Use Permit Amendment No. P-UA2003-21 with special conditions and modification of conditions that pertain to live entertainment, number of bar stools and percentage of liquor sales for Ola's Corner Restaurant at 167 S. Main Street.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Vice Chair Williams commented that this project has been a very long process and empathized with Reverend Dan Mills and hopes that he continues to outreach those that may not be able to handle the usage of alcohol. He also added that there are still a number of restaurants on Main Street that serve alcohol that give patrons the right to select usage.

Chair Nitafan opened the public hearing on Agenda Item No. 2.

2. USE PERMIT NO. P-UP2003-40: *A request to operate an internet cafe in the Foothill Square shopping center located at 365 Jacklin Road. Applicant: Allan Uy.*

James Lindsay, Acting Planning Manager, presented Use Permit No. P-UP2003-40, a request to operate an internet cafe in the Foothill Square shopping center located at 365 Jacklin Road. He noted that a number of these applications have come before the Planning Commission, and the Commission made an interpretation that these facilities would be best parked at a restaurant parking ratio. At the last meeting staff was asked to look at the parking demand ratio, and contacted the City of San Jose and other businesses about parking ratios for computer centers. Staff is recommending that the Commission consider a standard commercial retail ratio of one space per 200 square feet for these types of uses. He explained that there is a three parking stall difference using this approach and recommended approval with conditions based on the findings and conditions noted in the staff report.

Commissioner Giordano recalled the computer learning center arcade that came forward at the last meeting, and asked staff if they used the one space per 200 square feet parking ratio. Mr. Lindsay replied that the restaurant parking ratio was used and this is the first time staff will be using the one space per 200 square feet ratio.

Commissioner Giordano mentioned that staff was going to look into changing the language of this type of use for the future. Mr. Lindsay explained that staff is adding this to the list of items that will be considered for the next round of zoning amendments so as not to rely on the arcade definition.

Vice Chair Williams was concerned about parking and asked if the applicant will be having gaming tournaments or invitational tournaments and what is the frequency. Mr. Lindsay deferred the question to the applicant.

Commissioner Lalwani commented that this type of use brings two people in a car such as a father and child so she supports the parking ratio.

Chair Nitafan mentioned his confusion with the internet café definition and felt it does define the entire business since there will be computer stations. He asked if staff has a better word to describe the use. Mr. Lindsay explained that when staff proposes the amendment to the zoning codes, staff would change the classification so that an internet café will be referred to as a learning center. Both types provide high-speed internet connection and the differing factor is that some establishments serve food and some have coin operated food, but the predominant business model is high-speed internet access to provide gaming.

Chair Nitafan invited the applicant to speak.

Kelly Erardi, representing Shapell industries, commented that he is available for questions and the applicant is available to answer questions.

Vice Chair Williams asked the applicant if he plans on having local tournaments or invitation tournaments and what is the frequency of the tournaments and if the applicant will have training or tutorials.

Tuan Lee, Applicant, explained that the business would have regional tournaments quarterly which draws from a local crowd. As far as invitation only, he explained that the winners would go to another larger center that is opened in San Jose. As far as other activities, he explained that he doesn't have anything set up and that the staff teaches any new people anything they need to know and general knowledge is given to them.

Commissioner Lalwani asked if Mr. Lee has another center in San Jose. Mr. Lee responded that he has a total of five centers, two of which are in San Jose.

Commission Galang asked that if he didn't know anything about computers would he be able to make an appointment. Mr. Lee explained that the staff would be able to show him the basics such as setting up an account with the system and that his business does not have general curriculum. The software tracks the users time and the user purchases time by the hour. Once a name is entered in the computer, the application is available for the internet and chat programs. He also explained that most users are familiar with the internet.

Commissioner Sandhu asked if the applicant is acceptable to all the conditions of approval. **Allan Uy, Applicant**, replied that they are in agreement to all of the conditions.

Chair Nitafoan asked how many tournaments would there be and Mr. Lee replied that he has one-day tournaments. Regarding traffic, Mr. Lee explained that utilization of the 34 computer stations is about 30 to 40%, peaking after school and weekends.

Vice Chair Williams asked what type of tournaments are conducted and Mr. Lee explained that Warcraft and Counterstrike games are played.

Chair Nitafoan opened the public hearing on Agenda Item No. 2.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Motion to approve Use Permit No. P-UP2003-40, with special conditions and findings noted in the staff report.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

3. TIME EXTENSION

NO. P-TE2003-5: *Request for a one-time, 18-month time extension for a previously approved Buddhist temple expansion (P-SA2002-20 and P-UA2002-5) for the Avatamsaka Buddhist Lotus Society at 50 S. Main Street. Applicant: Tien Inn Master*

Chair Nitafan opened the public hearing on Agenda Item No. 5.

James Lindsay, Acting Planning Manager, presented a Time Extension No. P-TE2003-5, a request for a one-time, 18-month time extension for a previously approved Buddhist temple expansion (P-SA2002-20 and P-UA2002-5) for the Avatamsaka Buddhist Lotus Society at 50 S. Main Street and recommend approval with conditions.

Commissioner Giordano noted that the Use Permit expired on November 6th or November 8th, and asked if the applicant applied for the extension before the expiration and Mr. Lindsay replied, "Yes".

Commissioner Giordano asked if the reason for the extension was because the applicant had not purchased the adjoining land and needed to revise their plans from the original approval for redesign of the building. Mr. Lindsay replied that he was not aware of those issues but was aware that the plans that were submitted did not conform to the approved drawings of the Planning Commission.

Don Peoples, Owner at 529 S. Main Street, representing himself, explained that he has been trying to pay attention to what is going on Main Street, and felt that if this variance is granted without public comment, it is obvious that the applicant has not complied with the Midtown plan. He felt that it is a very precarious situation to have a parking lot on the corner of Main Street and Carlo Street and that is everything against the Midtown Plan and that the building could have been designed better with a new building in the back and the parking in the front. He has concerns about the whole concept and strongly recommends public comment on this. He is also concerned that the applicant had 2-½ year to complete the project and they have not completed it on time.

Commissioner Lalwani asked Mr. Peoples what his specific concern is. Mr. Peoples replied that the Midtown Plan has made a vision for Main Street and in the 1950's, people would put the parking lot in the front so peoples can see all the empty parking spaces. In the Midtown Plan, you want to hide the parking so that it is not the prominent feature. He felt that the project could have been designed to move the sanctuary in the front and move the parking lot in the back.

Motion to close the public hearing.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

Attorney Faubion explained that if the applicant applies for the time extension prior to the expiration, than it keeps the application alive. She couldn't say for sure, but recalled that the original project was noticed and recalled discussion of it, but staff could confirm if the public hearing took place. At this point, the applicant has an approval and all they are requesting is at time extension.

Chair Nitafan stated that he thought the project was properly noticed properly and recalled that there were a lot of speakers that filled up the chambers and it was approved and agreed with Attorney Faubion.

Commissioner Giordano mentioned Mr. People's comments about a variance and Mr. Lindsay replied that there is no variance request.

Vice Chair Williams mentioned that he was confused with Mr. People's comments about the project not being publicly noticed and also recalled that when the project came forward, the applicant had proposed three buildings with underground parking, and that there was a lot of dialogue concerning the design. He remembers that it was publicly notice and said he could understand the time extension with respect to the economy and engineering conditions. He felt that the building was one of the most beautiful structures there to help beautify that section of main street. Based upon what has taken place, he would vote for an extension on behalf of the applicants, and that they will be able to succeed to have there place of worship.

Steve Yen, Architect, explained that he has been working on the project for the past 4 years and agreed that it will beautify the corner of Main Street and Carlo Street, the gate of the City of Milpitas. He explained that a parking lot is designed at the corner and will have a beautiful landscaping surrounding the parking so that no one can see it. Also, the building was designed in the back so that a mini-park could be created for pedestrians walking to the building.

Commissioner Giordano asked what are the requirements for landscaping. Mr. Lindsay asked the Commission to refer to their plans and pointed out the landscaping. Chair Nitafan added that at the time, the Commission scrutinized the drawings.

Motion to approve Time Extension No. P-TE2003-5 with special conditions noted in the staff report.

M/S: Williams/Lalwani

AYES: 6

NOES: 0

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:08 p.m. to the next regular meeting of December 10, 2003

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary